United Nations A/HRC/31/71

General Assembly

Distr.: General
18 March 2016

Original: English

Human Rights Council
Thirty-first session
Agenda item 4
Human rights situation that require the Council's attention

Report of the Special Rapporteur on the situation of human rights in Myanmar* **

Summary

Four years of wide-ranging reforms have brought fundamental changes to Myanmar. In November 2015, historic general elections were held, and a new Government will shortly be formed. Nonetheless, formidable human rights challenges remain. In the present report, the Special Rapporteur builds on previous reports to identify key priority areas that should be tackled by the new administration.

* The present report was submitted after the deadline in order to reflect the most recent developments.
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GE.16-04398(E)

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I. Introduction

1. In the present report, submitted to the Human Rights Council pursuant to its resolution 28/23, the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, examines the developments in Myanmar since her reports to the Council, in March 2015 (A/HRC/28/72) and to the General Assembly, in October 2015 (A/70/412). Building on these and other past reports, the Special Rapporteur identifies key priority areas for the new Government in addressing prevailing human rights concerns.

2. Four years of wide-ranging reforms have brought fundamental changes to Myanmar. During that time, thousands of political prisoners were released, numerous laws were adopted or reformed, and significant steps were taken towards allowing greater media freedom and government transparency. The general elections held in November 2015, which were assessed positively by both national and international observers (despite some irregularities and pre-election concerns), saw the National League for Democracy (NLD) win an absolute majority.

3. The new Government will now face formidable human rights challenges. The transition period following the elections has been smooth and peaceful, but also one of great uncertainty. Allegations of human rights violations continue to be reported, including arrests and prosecutions of civil society actors for peaceful and democratic activities. At this important juncture, the Government should not only further the reforms initiated by outgoing President Thein Sein, but also create an environment in which communities, civil society actors and human rights defenders may speak out and protest peacefully without fear of reprisal. The international community should remain engaged and support Myanmar in furthering reforms and in fulfilling its international human rights obligations.

4. Owing to personal circumstances, the Special Rapporteur was unable to conduct her fourth official visit to Myanmar. She thanks the Government for its cooperation and flexibility in these circumstances, including its readiness to respond in writing to questions submitted by the Special Rapporteur. In the preparation of the present report, conference calls were conducted with national and international stakeholders and information was collected from a wide range of sources.

II. Elections of 8 November 2015

5. On 8 November 2015, Myanmar voted in historic general elections, which were welcomed by the Secretary-General as "a significant achievement in Myanmar's democratic transition". The more than 12,000 international and national observers concluded that the polls had been generally well organized, orderly and peaceful.[1] Turnout was estimated at 70 per cent, with thousands casting their votes for the first time. In the elections for the Upper House of the Union Parliament, the NLD won 135 seats, the Union and Solidarity and Development Party (USDP), 11 and other parties, 22. In the Lower House, the NLD won 255 seats, the USDP, 30 and other parties, 38. Elections were postponed in around 600 village tracts, mainly in Kachin and Shan States, due to security concerns.

[1] See Carter Centre, "Carter Center Congratulates Myanmar People on Election, Urges Key Democratic Reforms", press release, 10 November 2015, and European Union Election Observers Mission, "A well-run, competitive election with legal reforms and procedural improvements remaining", press release, 10 November 2015.

6. The Special Rapporteur publicly welcomed the elections as a new chapter in the country's history. She recalled, however, that pre-election human rights concerns were symptomatic of broader human rights challenges requiring the urgent attention of the new Parliament and Government. They include the disenfranchisement of hundreds of thousands of people, including from minority communities; the disqualification of many Muslim candidates; and continuing restrictions in the exercise of the rights to freedom of expression, peaceful assembly and association.

7. Following the announcement of the election results, President Thein Sein congratulated Daw Aung San Suu Kyi and affirmed his commitment to an orderly and peaceful transfer of power. The Commander-in-Chief of the armed forces also reiterated past pledges to respect the election outcome. On 18 January 2016, the Union Election Commission announced the names of the military representatives who would occupy the 25 per cent of parliamentary seats reserved for them. The last session of the outgoing Parliament concluded on 28 January. The new Parliament, which includes more than 100 former political prisoners, convened its first session on 1 February. The new Government is expected to take up its functions on 31 March 2016.

III. Situation of human rights

A. Rule of law and democratic space

1. Legislative reform

8. The Special Rapporteur welcomes the legislative reforms carried out since 2011 and the steps taken by the Government to review and amend some laws that do not meet international human rights standards.[2] She was informed that the Parliament had passed more than 220 laws during this period. As noted in past reports, however, some of these laws and older laws still in force do not comply with international standards and should be amended as a priority (see annex for a non-exhaustive list).

9. With the arrival of a new Government and Parliament backed by a strong mandate, Myanmar has the opportunity to transform its domestic legislation. The Special Rapporteur therefore recommends the development of a comprehensive programme of legislative reform to ensure compliance with international human rights norms and provide protection for the rights of the entire population. Involving civil society in this process, strengthening the independence of the judiciary and improving access to justice will be vital. In this way, Myanmar can strengthen the rule of law and build confidence in national institutions.

10. In June 2015, five proposed amendments to the Constitution of 2008 were submitted to Parliament, but ultimately rejected. They included a proposed change to article 436, lowering from 75 to 70 per cent the proportion of parliamentarians required to approve a constitutional amendment, and to article 59 (f) on the ineligibility for presidential office of those with spouses and children of foreign nationality. Only an amendment to article 59 (d) – replacing the word "military" with "defence" among the required areas of knowledge for presidential candidates – was adopted. A positive outcome of a referendum on the amendment is required before it can enter into force. The Special Rapporteur has previously highlighted the need to reform constitutional provisions that do not comply with international standards (see A/HRC/28/72, para. 25, A/69/398, paras. 63-67 and A/70/412,

[2] For example the Wireless Telegraphy Act (1934), the Printer and Published Registration Act (1962) and the Law Relating to the Forming of Organizations (1988).

para. 68). She also believes that the effective operation of the rule of law in Myanmar will require amendment of the Constitution of 2008. While aware that discussions on constitutional reform continue to be politically sensitive, this is of vital importance for a democratic Myanmar; she therefore encourages all political parties and stakeholders to continue their dialogue to this end.

11. The current legislative process should be reviewed as a priority. The lack of systematic public consultation on draft laws and the involvement of civil society have resulted in laws that do not meet the needs of the people and that fall below international standards. The Special Rapporteur therefore calls upon the new Government to take measures to improve the legislative process and to adopt procedures that guarantee transparency and the systematic engagement of civil society and the general public in law-making. The Special Rapporteur welcomes the adoption by the Office of the Attorney General of the Strategic Plan (2015-2019), which includes important commitments to draft and vet laws that serve to protect human rights and to uphold prosecutorial ethics. She encourages continued cooperation with the international community to ensure full implementation of the plan.

12. The Special Rapporteur is concerned by the adoption, on 29 January 2016 (the last day of the previous Parliament), of the Former Presidents' Security Law. The law, which grants immunity for undefined "measures" taken during office "in accordance with the laws", could potentially grant immunity for grave violations of human rights, in contravention of international law.

13. The draft prison law, which remains pending, falls below international standards in several areas (see A/70/412, para.74). The Special Rapporteur recommends that the provisions on the use of force by prison superintendents be amended, and that provisions mandating independent monitoring of prison conditions be included; that clear limitations on the use of solitary confinement be introduced; and that fettering as a means of restraint be prohibited.

14. The draft child law is currently before the Office of the Attorney General for review. The Special Rapporteur welcomes the engagement with civil society in its development, as well as the provisions that would increase the State's compliance with the Convention on the Rights of the Child, including those on the recruitment of children in the armed forces and on the minimum age of criminal responsibility. This important legislation should be adopted by Parliament without delay.

15. An independent judiciary capable of enforcing legislation fairly and consistently is necessary for the viability of the rule of law. Although the separation of powers and the independence of the judiciary in Myanmar are guaranteed by the Constitution of 2008, they are undermined by the control currently exercised by the executive over the judiciary. Moreover, the Special Rapporteur notes that the training of individuals holding judicial positions is inadequate. There is also widespread evidence of judicial corruption. In a report issued in December 2015, the Judicial and Legal Affairs Complaints and Grievances Investigation Committee found that the judiciary remained one of the country's most corrupt institutions. It confirmed the existence of a chain of bribery with judges at different levels taking instructions from their superiors.

16. In the light of the above, the Special Rapporteur welcomes the continued efforts made to strengthen the judiciary, including the adoption of the Strategic Plan (2015-2017) by the Supreme Court. Further steps are, however, necessary to guarantee the independence of the judiciary, such as measures to reform the judicial appointment process, in accordance with article 10 of the Basic Principles on the Independence of the Judiciary, including by creating a judicial appointments committee; increasing the salaries and pensions for judges to make them commensurate with the status and responsibility of their office; creating a

specialized, independent body to investigate allegations of judicial corruption; and improving continuing education and training for the judiciary.

17. An independent legal profession is also necessary to facilitate access to justice and to ensure that rights are fully upheld, including respect for the right to defence. Positive developments have been witnessed in recent years, including the creation of a unified professional lawyers association. It is hoped that the association will act as an effective and independent professional body representing lawyers' interests. Nevertheless, the Special Rapporteur remains concerned by the broad powers of the executive and the judiciary to suspend lawyers' practicing licences. For example, on 15 September 2015, Khin Khin Kyaw, a defence lawyer representing the protestors arrested in Letpadan, was charged by the presiding judge under section 228 of the Penal Code ("intentionally insulting or interrupting a public servant in judicial proceedings") – when detainees voiced their disapproval in the court room after Khin Khin Kyaw informed them that the judge had rejected her application to amend the court record – and now faces the prospect of six months of imprisonment and disbarment. The Bar Council will also need to be reformed in order to ensure that complaints against lawyers are handled by an independent and impartial tribunal, in compliance with due process.

2. Democratic space

18. Since 2011, democratic space has been opening up in Myanmar, as reflected in greater media and Internet freedom, newfound political freedoms, increased political and social activism, and an increase in the number of civil society actors and trade unions. Challenges nonetheless remain, and certain negative trends, which the Special Rapporteur has previously highlighted, continue to raise concern. They include ongoing restrictions on the exercise of the rights to the freedoms of expression, association and assembly, the arrest of individuals in relation to the exercise of these rights, and the increasing intimidation, monitoring and surveillance of human rights defenders.

19. The Special Rapporteur remains concerned about the continuing application of problematic legal provisions (both historic and recently enacted) leading to the arrest, prosecution and conviction of civil society actors, journalists and human rights defenders. In this regard, she once again draws special attention to section 18 of the Peaceful Assembly and Peaceful Procession Law (2011) (as amended in 2014), sections 143, 145, 146, 147, 500 and 505(b) of the Penal Code, section 17(1) of the Unlawful Associations Act, the Official Secrets Act, the Emergency Provisions Act, and section 66(d) of the Telecommunications Act. The Special Rapporteur reminds the Government that detention under such laws, which are incompatible with international human rights standards, could give rise to its qualification as arbitrary (see A/HRC/22/44, para. 65). As long as these and other laws that have been used in the past to silence critics remain in force, there will always be a risk of perpetuating political imprisonment.

20. The Special Rapporteur is also particularly concerned by the practice of bringing multiple charges against individuals in different townships for the same offence. Often, additional charges are brought against those already in detention, resulting in some individuals being forced to undergo multiple trials concurrently; for example, Phyoe Phyoe Aung, a student protestor, faces multiples charges for her involvement in the demonstration against the National Education Law in Letpadan in March 2015. She is regularly brought before different township courts to face several trials, with no clear end in sight.

21. In other cases, charges for past offences for which no action was taken at the time are suddenly brought forward; for example, Mee Mee, Nilar Thein, and Thet Thet Aung, three women from the organization 88 Generation, were charged in February 2016 under section 18 of the Peaceful Assembly and Peaceful Procession Law for their involvement in demonstrations held in 2014 and 2015. In December 2015, Su Su Nway was arrested again

and charged, together with eight farmers, under section 18 of the Peaceful Assembly and Peaceful Procession Law for a protest held in 2014 against land confiscations.

22. The above developments seem to reflect a trend whereby the system continues to restrict the rights of individuals exercising fundamental freedoms and to stifle dissent, which in turn generates fear and uncertainty and deters political and social activism. The Special Rapporteur therefore encourages the Government to reconsider its response to critical and independent voices. Civil society and human rights defenders play a vital role in democratic societies. The Government should create an enabling environment for these actors to conduct their activities without fear of reprisal.

23. The Special Rapporteur is concerned similarly by reports that journalists and media workers continue to face legal action under legislation that is incompatible with international human rights law. There are also increasing reports of government and military interference in the rights of individuals to freedom of expression online. In this regard, she notes with concern the convictions of Patrick Kum Jaa Lee and Chaw Sandi Tun, who were both sentenced to six months of imprisonment, under section 66 (d) of the Telecommunications Act 2014, for Facebook posts deemed defamatory to the Commander-in-Chief. The Special Rapporteur calls upon the Government to repeal all provisions that provide for criminal sanctions for defamation.

24. The Special Rapporteur notes the Government's efforts to update media-related legislation, including the adoption of the News Media Law (2014), the Printing and Publishing Enterprise Law (2014) and the Law Concerning Television and Radio Broadcasting (2015). While many of these laws improve on the previous framework, they also contain problematic provisions (see A/HRC/28/72, paras. 6 and 7). In addition, the enactment of these laws without repeal of earlier provisions has created a complicated media law framework. Concern about harassment, a lack of clarity in the application of regulatory laws and physical attacks on journalists have resulted in fear and self-censorship in the media, which hampers the functioning of an independent press in Myanmar. The appointment of the first media council in October 2015 is a positive development. The Special Rapporteur hopes that it will be a strong and independent professional body providing guidance to the media. She is also encouraged by the statement made on 24 January 2016 by the Commander-in-Chief, in which he recognized the indispensable role played by the media during this time of nation-building.

25. The Special Rapporteur is concerned that civil society actors continue to report being monitored by military intelligence and the Special Branch Police, such as being followed and photographed at meetings, and their families, friends and colleagues being questioned on their whereabouts. Special Branch informers reportedly engage in online monitoring, including by hacking social media accounts and intercepting e-mail communications. Under sections 76 and 77 of the Telecommunications Law 2013, the Government has broad powers to enter and inspect telecommunication services for matters relating to national defence and security or public interest, and to intercept data in an emergency situation. The Government has yet to draft legislation on the interception of communications by law enforcement bodies.

26. Procedural failings for individuals in detention, such as the length of pretrial detention and the denial of bail, including for those with chronic or serious health conditions, remain issues of concern. Of the 127 individuals arrested in relation to the protests held against the National Education Law in Letpadan in March 2015, 53 remain in Thayawaddy prison and are still on trial one year after their initial arrest. Some 23 reportedly received no treatment for injuries resulting from police action at the time of their arrest, and 24 reportedly developed medical conditions in prison due to inadequate nutrition and unsanitary cells. A total of 18 on a hunger strike were transferred to Yangon Hospital for specialist treatment on 1 December 2015. The Special Rapporteur notes the statement

issued by the Ministry of Home Affairs that all detainees are now in good health and its reference to section 884 of the Prison Manual Act requiring that treatment be provided by medical teams in prisons. She reminds the Government that prisoners must have access to adequate health care and be housed in sanitary conditions, in accordance with the Standard Minimum Rules for the Treatment of Prisoners and principle 9 of the Basic Principles for the Treatment of Prisoners.

27. The Special Rapporteur is particularly concerned by the arrest of Gambira (Nyi Nyi Lwin) on 19 January 2016. According to the Government, he was charged under section 13 (1) of the Immigration (Emergency Provisions) Act (1947) for having allegedly entered Myanmar illegally. Gambira reportedly suffers from serious mental health issues resulting from six years in detention following his involvement in anti-government protests in 2007. Despite the fact that his psychological well-being is likely to be severely affected by continued detention, he was repeatedly denied bail in recent hearings. The Special Rapporteur reminds the Government that pretrial detention should be considered a measure of last resort only.[3] She also calls upon the relevant courts to grant bail to all those in detention suffering from serious health conditions, in particular when there is evidence that the detention itself is worsening those conditions.

28. Two presidential amnesties resulted in the release of 6,966 prisoners, on 31 July 2015, and 102 prisoners on 22 January 2016; 55 human rights defenders and political prisoners were among those released. Civil society sources estimate, however, that 84 political prisoners remain in prison, while more than 400 are detained pending trial.[4] Such figures clearly indicate that the process of reform and democratic transition has yet to be completed. The Special Rapporteur urges President Thein Sein to use his remaining weeks in office to release, immediately and unconditionally, all political prisoners. The majority of political prisoners released in recent years have received a presidential commutation of their sentence under section 401 of the Criminal Procedure Code. Section 401 (3) affords the President broad powers to return individuals to prison if a condition of their release is not satisfied. A release under section 401 also offers no provisions for review of the original detention and conviction. Consequently, many former political prisoners are classified as ex-criminals on their release, which makes their subsequent access to work or education opportunities difficult. For example, three student protestors from Yadanabon University were released on 22 December 2015 only to find that they had been suspended and faced expulsion.

B. Incitement to hatred and discrimination

29. The Special Rapporteur has previously stated that protection of the right to freedom of expression must be accompanied by efforts to combat intolerance, discrimination and incitement to hatred. In this regard, she welcomes the statement made by President Thein Sein in January 2016 to the participants in the World Buddhist Peace Conference, urging religious and political leaders around the world to join hands and to teach their followers to practice the "middle way" and "to avoid extremism". She nonetheless remains concerned about reports of incitement to hatred against minorities, including the Muslim population, which may fuel discriminatory sentiment and divisions. The Secretary-General, on 1 November 2015, expressed similar concern at the continuous resort to hate speech and the incitement of communal animosities resorted to by extreme elements among the majority community in Myanmar.

[3] United Nations Standard Minimum Rules for Non-custodial Measures, rule 6.

[4] Figures provided by the Assistance Association for Political Prisoners (Burma).

30. On 30 January 2016, a radical monk posted a video on Facebook depicting a graphic recreation of the rape and murder of a Buddhist woman in Rakhine State in 2012, an incident viewed by many as having triggered the violence witnessed that year. A longer video may be released in the near future. Although the video was later removed by Facebook, the Special Rapporteur is troubled by this new act of incitement against the Muslim community and the absolute silence of the Government in this regard.

31. The Special Rapporteur also remains concerned by the extreme measures called for by radical Buddhist groups, such as the Ma Ba Tha, in the name of "protecting race and religion". While attacks and threats are mainly directed against Muslim communities, they also often target anyone offering a different perspective or speaking for non-discrimination. Human rights defenders and other civil society actors calling for interfaith harmony or supporting the rights of minorities have been threatened and harassed.

32. Greater efforts should be made to publicly condemn, prevent and combat acts of incitement to discrimination, hostility and violence. Serious and extreme instances of incitement to hatred, which cross a clearly defined multi-step threshold (see A/70/412, para. 32), should be criminalized. For other cases, civil laws providing for diverse procedural and substantive remedies should be adopted. Any measures taken should not, however, impose additional restrictions on the rights to freedom of expression, assembly and association. Underlying root causes should also be addressed, including through a comprehensive series of preventive, education and awareness-raising measures. In this regard, the Special Rapporteur welcomes and encourages further interfaith activities aimed at promoting intercommunal harmony and building a more tolerant, diverse and inclusive society.

33. The Special Rapporteur remains concerned at the package of four "race and religion" laws adopted in 2015. Since they were first proposed in November 2014, she and other special procedure mandate holders have repeatedly drawn attention to the discriminatory impact of these laws, particularly on minorities and women, and their lack of compliance with the State's human rights obligations. She renews her call for their revision or repeal.

34. As highlighted previously by the Special Rapporteur and previous mandate holders, it is crucial that the discriminatory Citizenship Law (1982) also be brought into line with international standards. In particular, provisions that provide for the granting of citizenship on the basis of ethnicity or race, which are clearly discriminatory, should be revised.

35. On 31 March 2015, all temporary registration cards, the main identification document held by Rohingya and by persons of Chinese or Indian descent, expired. On 2 June, the Government announced that those who had submitted their card by the deadline (around 469,000 people) were eligible to apply for new identity cards (referred to as "cards for those whose nationality will be scrutinized"). To date, the degree of acceptance of the new cards by the affected population has been low, mainly owing to a lack of trust in the process. Consequently, most Rohingya and other non-citizen minorities are now without any valid identity document, thus increasing their vulnerability. For many, the only current evidence of legal residence in Myanmar is the compulsory household list.

C. Rakhine State

36. The need to address the deeply entrenched human rights issues in Rakhine State represents a significant challenge for the new Government, but also a major opportunity to break away from the tragic status quo. Innovative approaches could rapidly bring about positive change, which could in turn contribute to the broader objective of strengthening the rule of law and national reconciliation across Myanmar.

37. In recent years, significant national and international attention has been drawn to the situation in Rakhine State. Little attempt has been made, however, to address structurally the serious human rights concerns on the ground. Rakhine is the second poorest State in Myanmar, and faces long-standing social and economic development challenges that affect all communities. Challenges include malnutrition, low-income poverty and weak infrastructure, compounded by natural hazards.[5] Almost four years after the first outbreak of violence in 2012, there are still some 140,000 internally displaced persons in Rakhine State, the majority of whom are Muslim. It is crucial that human rights be placed at the centre of all humanitarian and development responses if sustainable peace and reconciliation are to be achieved.

38. The Special Rapporteur is fully aware of the magnitude and complexity of the issues in Rakhine and their highly politicized nature. The activities of ultra-nationalist political parties and religious movements have helped to fuel tensions and polarize communities. At the same time, positive forces are also at play. Many actors are working tirelessly to promote interfaith dialogue and harmony and to build bridges and trust between communities. Their approach will, however, unfortunately be limited as long as the deeper structural and legal issues remain unaddressed. In recent months, a number of new reports and articles have once again highlighted alleged widespread and systematic human rights violations faced by the Rohingya for decades, and called for international action.

39. The Special Rapporteur calls upon the new Government to take immediate steps to put an end to the highly discriminatory policies and practices against the Rohingya and other Muslim communities in Rakhine. In practice, these policies deny the affected population some of their most fundamental rights. Of particular importance is the need to restore freedom of movement for all, which in turn could facilitate the process of return and reintegration of communities. Ongoing discriminatory restrictions to freedom of movement are largely used to control the Rohingya population; as a consequence, movement is restricted within and between townships, and people must obtain specific authorization to travel outside Rakhine State. These restrictions severely affect all aspects of their life, including access to livelihood, and hamper interactions between the Rakhine and Muslim communities. Without progress on this key issue, it will not be possible to address many of the other human rights concerns in Rakhine. Local orders in northern Rakhine State require Rohingya to obtain permission to marry, and attempt to limit couples to two children; any child born beyond that limit risks not being included in the family household list and remaining unregistered, a status that has a multitude of consequences for the child. As all children have the right to be registered at birth, the Special Rapporteur calls upon the Government to take steps towards ensuring universal birth registration in Rakhine, regardless of the child's or the child's parents' nationality, statelessness or legal status (see A/HRC/31/29; see also CRC/C/MMR/CO/3-4, para. 44).

40. The Special Rapporteur continues to receive reports of cases of preventable deaths due to lack of access to emergency medical treatment. She is particularly concerned about patients in need of emergency treatment outside Sittwe who are required to travel to Sittwe General Hospital to receive treatment owing to restrictions on their freedom of movement. In certain locations, this trip can take up to several hours and has reportedly led to preventable deaths. The Special Rapporteur calls upon the Government to uphold the right to health of the entire population in Rakhine and to ensure equal access and medical treatment to all in public health facilities, irrespective of religion, ethnicity or citizenship.

41. In northern Rakhine, arbitrary arrests and detention continue to be reported. Some cases appear linked to extortion, given that detainees are often released following the

[5] See Center for Diversity and National Harmony, Rakhine State Needs Assessment, September 2015.

payment of a bribe. Since January 2016, the Border Guard Police and the "Immigration Team for the Prevention of Illegal Immigration of Foreigners" (MaKaPa) have been conducting their annual population check to update Rohingya household lists. They have announced new and cumbersome procedures for adding children to the lists, which may perpetuate the problem of unregistered children.

42. On 8 February 2016, the curfew order imposed in northern Rakhine since June 2012 was once again renewed for two months. The order also prohibits gatherings of five or more people in public areas, including at mosques, further affecting on daily life and basic religious observance. The curfew and related restrictions are discriminatory, as they appear to be enforced only against the Rohingya.

43. The Special Rapporteur highlights the increasingly dire housing conditions for the majority of internally displaced persons, including some 95,000 located in Sittwe rural camps. Longhouses accommodating multiple families were initially designed to last only two or three years, and many are now collapsing. In 2015, some 25,000 internally displaced persons were provided with 3,000 individual houses, but only a small minority relocated voluntarily. The Special Rapporteur reiterates her previous calls to the Government to ensure durable solutions to displacement in accordance with international standards; these should include voluntary returns to places of origin and avoid the permanent segregation of communities. The right to an adequate standard of living must be ensured for those who remain displaced as well as for those who return.

44. Little progress has been made in resolving the legal status of the more than 1 million Rohingya in Myanmar, including their access to citizenship. The citizenship verification process, which had raised international concern, including that of the Special Rapporteur (see A/69/398, para. 52 and A/70/412, para. 41), is effectively stalled. Those granted citizenship through the process, including in Myebon Township, where it was piloted in June 2014, reportedly remain in camps and continue to face restrictions on their freedom of movement and access to basic services.

D. Gender and women's rights issues

45. The Special Rapporteur welcomes the adoption of the National Strategic Plan for the Advancement of Women (2013-2022), and urges the Government to adopt, as a matter of priority, implementation mechanisms that are adequately funded for the plan to be implemented.

46. The Special Rapporteur notes that, while the number of women parliamentarians has increased following the 2015 elections, women only account for 13 per cent of Members of Parliament. Equally, women's representation at the regional and local levels remains low, for example, making up just 0.25 per cent of village tract administrators. A greater effort should be made to promote women's participation in public and political life, in accordance with the State's obligations under the Convention on the Elimination of All Forms of Discrimination against Women.

47. Although no national prevalence data currently exist, reports indicate that all forms of sexual and gender-based violence are a matter of serious concern across Myanmar. In particular, anecdotal evidence reflects a high prevalence of emotional, physical and sexual intimate partner violence committed against women. In this context, the Special Rapporteur welcomes the development of the draft law on the prevention of violence against women in conjunction with civil society, and emphasizes that it must comply with the Convention on the Elimination of All Forms of Discrimination against Women. The draft law, currently being reviewed by the Office of the Attorney General, has been subject to several problematic revisions. It should contain a comprehensive definition of rape and include

provisions against rape and other forms of sexual violence committed by the military, police and uniformed personnel in conflict. The law should also address all forms of gender-based violence, including domestic violence and marital rape, and provide for adequate penal sanctions, including against the military, as well as other measures, such as interim protection orders.

48. Sexual and gender-based violence, including domestic violence, is a particular problem in conflict areas. In his report on conflict-related sexual violence, the Secretary-General found that sexual violence was widespread in Kachin State, northern Shan and Rakhine States, and areas subject to ceasefire agreements in Chin State and the south-east of the country (S/2015/203, para. 41). Civil society organizations documented 118 cases of sexual violence, allegedly committed by the military across Myanmar between 2010 and 2014.[6] The significant underreporting of sexual violence would suggest that statistics underestimate the true scale of the problem. Victims are reluctant to report cases for a range of reasons, including fear for their own security. The Special Rapporteur was also informed of cases where small amounts of financial compensation were apparently offered to families to discourage legal action; for example, the family of a girl allegedly raped by a soldier was reportedly induced by the army to sign a statement declaring that they would not pursue prosecution after accepting a financial settlement.

49. When cases are reported and prosecuted, it is frequently through military procedures, which lack transparency and often provide little justice. While the Special Rapporteur welcomes the conviction of two soldiers for rape in 2014, that outcome does not reflect the general trend nor the structural challenges involved, which often result in impunity. Although section 72 of the Defence Forces Act (1959) requires serious crimes committed against civilians (including murder and rape) to be transferred to civilian courts, it contains broad exceptions for acts committed "while on active service". The Ministry of Defence informed the Special Rapporteur that 61 members of the military were prosecuted for sexual and gender-based violence from 2011 to 2015; of these, 31 were tried under court martial. According to information from the Government, families are sometimes invited to witness trials in military courts; however, proceedings remain opaque and victims are frequently unaware of whether action has been taken against perpetrators.

50. Investigations, when conducted, are often seen as flawed and lacking in credibility. One year on, the investigation into the alleged rape and murder of two Kachin schoolteachers, Maran Lu Ra and Tangbau Hkwan Nan Tsin, in Shan State has yet to lead to any charges. Local villagers are frustrated at the ongoing impunity of perpetrators. They also fear future attacks or legal action, given that the military has allegedly threatened to pursue anyone publicly accusing the army of involvement. In addition, a large number of cases of rape, including child rape, are reportedly handled by traditional justice mechanisms and often settled by arranging the marriage of the victim to the perpetrator, without any consideration of the victim's rights.

E. Conflict and peace process

51. On 15 October 2015, a nationwide ceasefire agreement was signed between the Government and eight armed groups. This followed the signature since 2011 of bilateral ceasefire agreements with 14 ethnic armed groups. Nonetheless, violent clashes continue in parts of Myanmar, including in Kachin and Shan States, as well as Chin, Rakhine and Karen States. The Special Rapporteur also notes with concern the conflict between two

[6] Women's League of Burma, *"If they had hope they would speak": The ongoing use of state-sponsored sexual violence in Burma's ethnic communities*, November 2014

ethnic groups, the Ta'ang National Liberation Army and the Restoration Council of Shan State – a signatory of the NCA – in Shan State. The conflict first erupted in November 2015 and has recently intensified.

52. Civilians bear the brunt of the ongoing fighting. The Special Rapporteur is concerned at reports of serious human rights violations committed by all parties to the conflict. Attacks against civilian populations, extrajudicial killings and torture (including of persons with suspected links to specific armed groups), inhumane and degrading treatment, abductions of men, women and children (including for forced labour and for use as possible human shields), and looting, property confiscation and destruction have been reported. Allegations of forced recruitment, child and underage recruitment (in order to maintain troop strength) also persist, notably by ethnic armed groups. Fighting between the parties, with reports of indiscriminate firing and shelling in villages, have resulted in civilian casualties and injuries. Additionally, as noted above, reports of sexual and gender-based violence, including domestic violence in conflict-affected areas, are widespread. There have also been reports of trafficking of women and girls, as well as of early and forced marriage, particularly in Shan State.

53. The Special Rapporteur calls upon all parties to ensure the protection of civilians during armed conflict and to respect international human rights and humanitarian law. She recalls in particular common article 3 of the Geneva Conventions, to which Myanmar is party, which provides for the protection of civilians from inhumane treatment and violence to life and person in non-international armed conflicts. Individual cases should be investigated promptly by an independent body and perpetrators held to account. The Special Rapporteur notes that victims are frequently reluctant to make official complaints out of fear of retaliation. Steps should be taken to address such concerns. Preventative activities such as training and awareness-raising in the military and armed groups should also be expanded.

54. There are more than 96,000 displaced persons in Kachin and northern Shan States as a result of the conflict. Further displacements have been caused by fighting between the Restoration Council of Shan State and the Ta'ang National Liberation Army, including of 3,000 people after one week of fighting in February 2016. In southern Shan State, many of those displaced by the clashes in late 2015 have reportedly now returned; however, 2,000 people remain displaced, some in camps that lack adequate drinking water and sanitation. International organizations have limited access to many conflict-affected areas owing to their remoteness, security concerns and the difficulty of securing authorizations from government authorities or ethnic armed groups. Local community and civil society groups, often with limited resources and capacity, continue to provide much-needed assistance in these areas.

55. The lack of access hampers much-needed information-collection and reporting on conflict-related concerns and violations. Humanitarian access to 1,000 civilians displaced in Sumprabum (Kachin State) remains restricted, despite reports of the urgent need for emergency shelter and medical supplies.[7] An estimated 4,000 individuals reportedly remain in China displaced from the Kokang self-administered zone.[8] Little information is available on the status of the fighting in the area or on the steps taken to investigate alleged human rights violations reported during the fighting in 2015. Internally displaced persons in camps in and around the area apparently endure difficult conditions, including restrictions on movement and no access to markets, education or livelihood. Fighting has also flared in

[7] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin, Myanmar, issue 7, November – December 2015.

[8] Ibid.

Rakhine and southern Chin States between the Arakan Army and the Myanmar army, displacing hundreds of people.

56. The Special Rapporteur emphasizes that the rights of internally displaced persons and those affected by conflict must be addressed as a priority. The United Nations and its partners should have regular, independent and predictable access to all those needing humanitarian assistance. The Government and all parties to the conflict should grant immediate access to all sites hosting internally displaced persons. She welcomes the commitment to the voluntary return of displaced persons in the national ceasefire agreement and the commencement of small, local projects to provide durable solutions to displaced persons in Kachin State. The presence of an estimated 230,000 internally displaced persons in a situation of protracted displacement in the south-east of Myanmar and thousands more in Shan and Kachin States make such programmes vitally important. Any returns must be in compliance with the Guiding Principles on Internal Displacement and the Framework on Durable Solutions for Internally Displaced Persons. Steps must be taken to ensure that the informal or private education of internally displaced children is recognized, and that they have access to public education when they return. Returning individuals should also be assisted in reacquiring legal documents, which are the gateway to other services.

57. Landmines and unexploded ordnance are a major factor preventing the return of internally displaced persons, with casualties from landmines estimated at 3,700 in the past 15 years, but likely to be far higher.[9] The Special Rapporteur was particularly concerned at reports of the continuing use of landmines, resulting in casualties and injuries. She calls upon all parties to the conflict to cease immediately the use of landmines. The Special Rapporteur was informed that Myanmar continued to study the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, and calls again for its prompt signature. The mapping and clearance of landmines and unexploded ordnance should be prioritized, and receive assistance from the international community.

58. The Special Rapporteur welcomes the inclusion of the principles of equality and non-discrimination, justice and the right to self-determination in the national ceasefire agreement. Numerous human rights concerns are also addressed in general terms. Having been informed in August 2015 that the dialogue following the agreement would address these issues in more detail, she followed the progress of the first Union Peace Conference (held from 12 to 16 January 2016) closely. She welcomes the inclusion of land and natural resource concerns in discussions, and stresses that these complex issues – as well as broader entrenched inequalities – should be addressed in future talks. She notes that only a limited number of representatives of civil society organizations were able to attend the conference, leading some to feel excluded from the process. The Myanmar Peace Center informed the Special Rapporteur that national dialogues will be organized throughout the country before the next Union Peace Conference, and that civil society will have the opportunity to "play the most important role." Shared ownership and confidence are needed to ensure buy-in from all stakeholders and affected communities. She urges full consultation with local communities and civil society organizations in future.

59. The Special Rapporteur welcomes the commitment to achieve at least a 30 per cent participation by women at different levels of the political dialogue in the four-point proposals approved at the conference. This is the first step in ensuring the greater inclusion of women in the peace process. Women should, in accordance with Security Council

[9] Landmine and Cluster Munition Monitor, *Landmine Monitor 2015*, November 2015 The organization Mine Free Myanmar estimates 40,000 casualties.

resolutions 1325 (2000) and 1889 (2009), be represented at all levels, including in decision-making and leadership positions. She also calls for the integration of women's rights issues and a gender perspective in any future dialogue, and for women's civil society organizations to be given formal access to the process. She welcomes the recommendation made at a senior officials workshop held in 2015 on formulating a national strategy or plan of action on the implementation of Security Council resolution 1325 (2000), and urges the Government to work with national organizations and the international community in this regard.

60. Truth-seeking, accountability and reparations processes for current and historic conflict-related violations are critical for building a sustainable and inclusive peace. They should not be seen as threatening, but rather an opportunity to foster national reconciliation and to build trust. The Special Rapporteur urges the Government to consider broad and public consultations on possible frameworks and forms for such processes.

61. The Special Rapporteur welcomes the signing by the Government of the Optional Protocol to the Convention on the Rights of the Child on children and armed conflict in September 2015, and hopes that it will be ratified quickly. She also welcomes the efforts to implement the joint action plan of the United Nations and the Government to end and prevent the recruitment and use of children in armed conflict. In November 2015, the military discharged 53 underage recruits, thus bringing to 698 the total number of children released since the signing of the joint action plan in 2012. The Ministry of Defence informed the Special Rapporteur that 18,699 members of the military had received training on the prevention of underage recruitment; disciplinary action had been taken against 382 military personnel; the country task force on monitoring and reporting had made a total of 40 monitoring visits; and that efforts were being made to raise public awareness of the issue. The recruitment and use of children in the military, border guard forces, and particularly in non-State armed groups, continues nonetheless. Furthermore, the continued detention of children as "deserters" remains a concern. The Special Rapporteur calls upon the Government and all armed groups to end and prevent the recruitment and use of children as soldiers. She also urges the Government to accelerate the identification, release and reintegration of all children currently in the armed forces. The Government should also strengthen age verification and monitoring and oversight mechanisms for recruitment, and ensure that all those responsible for child recruitment and use, including civilian brokers, are brought to justice.

F. Development and economic, social and cultural rights

62. The Special Rapporteur welcomes the State's ongoing commitment to improve the economic and social development of its people. This remains of vital importance for the future transformation of the country. She reiterates the need to ensure that development and investment are managed proactively to ensure rights-based and people-centred processes, which bring benefits to all. Such processes should include poverty reduction, equitable resource-sharing and non-discrimination as central pillars. Steps should be taken to amend legislation where relevant, but also to change existing mindsets and practices. In this context, the signing by the Government of the International Covenant on Economic and Social Rights is particularly welcome, given that, together with the Sustainable Development Goals, it can constitute a comprehensive framework and benchmarks for the State's development.

63. Land issues will be one of the most pressing challenges for the new Government. An estimated 70 per cent of the population of Myanmar live in rural areas dependent on agriculture and related activities. Forced evictions, land-grabbing and land confiscation for development projects, mining and other natural resource extraction remain issues of serious

concern, increasing poverty and displacement and destroying livelihoods, with a consequent effect on a host of other rights, including access to health and education, and a loss of cultural and traditional knowledge. There is often little or no consultation with affected communities, limited or no compensation provided, and limited access to effective legal remedies.

64. The Special Rapporteur has previously highlighted how the complex existing legal framework provides insufficient protection against evictions and does not recognize customary land tenure or community-managed resources (see A/70/412, para. 62). She therefore welcomes the new national land use policy, adopted in January 2016 following consultations, which addresses some of these concerns. The adoption of an overarching land law following a similar process of extensive consultation with all stakeholders could help to protect the rights of farmers and rural communities throughout Myanmar, and strengthen the confidence of the private sector looking to invest.

65. The Land Confiscation Investigation Commission reported to the Parliament on 25 January 2016 that many land disputes remained unresolved, and that government bodies at different levels did not abide by relevant laws, procedures and recommendations made by the Commission. In accordance with principle 25 of the Guiding Principles on Business and Human Rights, the Government should take appropriate steps to ensure access to effective remedy, whether though judicial, administrative, legislative or other appropriate means. The Special Rapporteur believes, therefore, that the creation of a system for addressing land complaints with the necessary powers to provide redress would be an important safeguard for future cases. Meaningful redress must also be provided to the thousands of individuals whose land was confiscated in the past.

66. In an attempt to protect their rights, people have increasingly resorted to public protests against land confiscations. Unfortunately, some of those exercising their right to peaceful assembly, including farmers and land rights activists, continue to face harassment, intimidation and criminal prosecution. Such prosecutions should cease immediately, and those detained for peaceful protests should be released.

67. The Special Rapporteur welcomes the adoption in January 2016 of environmental impact assessment procedures, which may have a positive impact on the way development projects are conducted. Consultations should genuinely seek the input of affected communities. Other requirements, such as the public disclosure of assessments, must be implemented and enforced consistently. She welcomes the fact that the new standards apply to all projects, including those that have already commenced. Cooperation between civil society and regional or local authorities could assist in prioritizing the many projects to be examined.

68. One area requiring urgent review is the jade mining industry. In 2015, 37 landslides in Hpakant killed more than 150 people. These tragic events demonstrate the urgent need to guarantee the safety of those whose livelihoods depend on the mines, as well as the right to life and the health of the communities living near them. Although the Special Rapporteur was informed of the creation in January 2016 of a fact-finding group on the jade industry, which will focus on illegal vehicle importation, she urges the authorities to conduct a broader investigation into mining operations, which should include consultation with the communities affected and civil society organizations.

69. Transparency is also vital to enable local communities to hold vested interests to account and to ensure that development is beneficial to all. The Special Rapporteur therefore welcomes the publication, on 2 January 2016, of the first report on the Myanmar Extractive Industries Transparency Initiative for the period from April 2013 to March 2014.

She notes, however, the lack of detailed information relating to the jade industry, estimated to account for up to 48 per cent of the State's total gross domestic product,[10] including on beneficial ownership and contract terms. She calls for the release of such information, which could help to tackle corruption in the sector. The new Government should also consider reviewing existing legislation and regulations to ensure that they include transparency requirements and environmental, social and human rights protection.

70. Private companies have a responsibility not to cause or to contribute to human rights abuses. The Special Rapporteur therefore welcomes the increasing awareness of human rights in some companies in Myanmar, and notes that several have now adopted human rights policies. She encourages all investors and businesses proactively to ensure that they abide by the Guiding Principles on Business and Human Rights, as well as other relevant standards, such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of the Food and Agriculture Organization of the United Nations. She also encourages the Government to develop, following consultations with relevant government departments, civil society and the private sector, a national plan of action on business and human rights.

71. Drug addiction is an underreported phenomenon, and one of increasing concern, particularly in conflict-affected Kachin and Shan States. The Special Rapporteur heard concerns about the increased availability of drugs and the severe impact on the health and livelihoods of those affected, particularly youth. She therefore welcomes the permission recently given to the United Nations Office on Drugs and Crime (UNODC) to conduct the first national drug use survey. She is concerned, however, at new reports of community "vigilante" groups discriminating against or calling for extreme measures against drug users, such as public caning. The use of amphetamine-type stimulants in parts of Myanmar has more than tripled in recent years[11] and treatment options are severely limited. Although production has stabilized, Myanmar remains the second largest producer of opium in the world,[12] with poverty and continuing conflict driving poppy cultivation. Steps should be taken to improve the treatment options available for drug users, and efforts to tackle production should ensure long-term sustainable development for farmers.

G. Engagement with the international human rights system

72. The Special Rapporteur welcomes the ratification by Myanmar of several instruments since 2011, including the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, and recently the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. In 2015, Myanmar also became a signatory to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. She urges the new Government to ratify both instruments quickly, and welcomes the assurances of the Ministry of Foreign Affairs that priority will be given to these treaties. The Special Rapporteur also welcomes the Government's decision to join the Group of Friends of the Convention against Torture Initiative and the efforts to have the Convention translated. She hopes this will be followed by early ratification. She also urges the new Government to sign and ratify the International Covenant on Civil and Political Rights,

[10] Global Witness, *Jade: Myanmar's "Big State Secret"*, October 2015, p. 6.
[11] UNODC, Southeast Asia Opium Survey 2014, p. 49.
[12] UNODC, Southeast Asia Opium Survey 2015.

which would comprehensively underpin the consolidation of democracy and rule of law in the country.

73. Myanmar underwent its second universal periodic review in November 2015. While the Special Rapporteur commends the Government for its active engagement in the process, she regrets that many important recommendations were not accepted, including recommendations on the Peaceful Assembly and Peaceful Procession Law, the Citizenship Law and the four "race and religion" laws. She calls upon the Government nonetheless to consider implementing these recommendations. The Special Rapporteur hopes that the Government will take the necessary steps to ensure follow-up to the recommendations accepted, and those made by other human rights mechanisms. In this regard, she welcomes the statement by the Ministry of Foreign Affairs that Myanmar will consider the development of a national human rights plan of action to support the implementation of the recommendations accepted during the universal periodic review.

74. In November 2015, the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights classified the Myanmar National Human Rights Commission with "B" status. The Special Rapporteur urges the Government to amend the Myanmar National Human Rights Commission Law (2014) and to act on the Subcommittee's recommendations, particularly with regard to the appointment process and the need to ensure adequate funding and to safeguard the Commission's financial independence.

75. Lastly, given the broad scope of prevailing human rights challenges and the priorities for the new Government, the Special Rapporteur continues to highlight the value of establishing an office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) with a full mandate. The continued restrictions on visas and travel authorizations faced by the OHCHR team currently operating in Myanmar illustrate the need for a sustainable, long-term solution. The establishment of a full-fledged OHCHR office in Myanmar in the coming months could provide the Government and Parliament with much needed assistance and support in their efforts to consolidate democratic reforms and to ensure greater respect for human rights during this important period.

IV. Conclusions

76. Myanmar is a very different country to the one of just a few years ago. Four years of wide-ranging reforms have undeniably changed the situation of human rights. The impact of the historic elections held in November 2015, resulting in the formation of a new Government and Parliament, with more than 100 former political prisoners among them, cannot be overstated. Now is not, however, the time for complacency. The uncertainty and lack of clarity in government authority and functioning during this period of transition will not, it is to be hoped, be accompanied by instability and political tensions, which could provide an environment for further human rights abuses and violations. The situation should be monitored closely.

77. There is now a real opportunity to address and tackle the key human rights challenges that continue to affect all communities in Myanmar. These challenges should be at the top of the country's agenda over the coming weeks and months. The Special Rapporteur believes that this is essential in order to make meaningful and real progress towards democratic transition, national reconciliation, sustainable development and peace in Myanmar. While progress can and should be made quickly and urgently in some areas, others issues will take time to resolve. These are complex issues that will require not only legislative and policy change, but also a change in behaviour and mindset. The Government should regard civil society and human

rights defenders as vital partners in this process. Strengthened cooperation and closer engagement with the United Nations and international human rights mechanisms will also be important and would be greatly facilitated by an OHCHR office in Myanmar. The Special Rapporteur hopes she will have the opportunity to work closely and constructively with the new Government and all other stakeholders in Myanmar to improve the situation of human rights in the country.

V. Recommendations

78. The Special Rapporteur recognizes the legacy of reform left by President Thein Sein, in particular his progressive release of political prisoners though a succession of amnesties. She urges him to use his remaining weeks in office to release immediately and unconditionally all political prisoners, including peaceful protestors charged or convicted under the Peaceful Assembly and Peaceful Procession Law and the Penal Code, and those charged or convicted under outdated defamation, trespassing and national security laws.

79. In its first 100 days in office, the Special Rapporteur urges the new Government:

(a) To cease immediately the arbitrary arrest and prosecution of those exercising their rights to freedom of assembly, association and expression, and to release any remaining political prisoners;

(b) To condemn publicly all acts of incitement to discrimination, hostility and violence against minorities, while upholding freedom of expression;

(c) To lift the curfew and restrictions on freedom of movement in Rakhine State;

(d) To ensure access to adequate health, education and other basic services for all displaced persons, particularly in Rakhine State, without discrimination;

(e) To make every effort to reach an early agreement with the United Nations High Commissioner for Human Rights on the establishment of a country office in Myanmar with a full mandate.

80. With regard to the peace process and conflict-related violations, the Special Rapporteur recommends that all relevant actors:

(a) Ensure greater participation of women in the peace process, including in delegations, particularly in leadership roles, with a minimum quota of 30 per cent and the integration of women's issues and a gender perspective into political dialogue;

(b) Cease immediately the use of landmines and issue clear directives to adhere to international humanitarian and human rights law, and ensure the protection of civilians;

(c) Ensure that the United Nations and its partners have regular, independent and predictable access to all those in need of humanitarian assistance, wherever they are located.

81. The Special Rapporteur recommends that concrete steps be taken before March 2017 to implement the recommendations below.

82. With regard to the rule of law, the Special Rapporteur recommends that the Government and Parliament of Myanmar:

(a) Undertake a comprehensive review of legislation and legal provisions that limit fundamental freedoms and contravene international standards, with clear target dates for the conclusion of the review; legislation requiring urgent review should be identified, including those previously identified by the Special Rapporteur and the previous mandate holders (see annex);

(b) Establish a process of legislative reform with clear timelines for consultations on and the drafting and review of amendments to existing legislation or new draft bills. The timeline should allow for the full consideration of the proposed laws. An appropriate consultation process should be established and applied consistently to ensure transparency and adequate engagement by civil society organizations and members of the public. A vetting mechanism should also be established to ensure that all draft legislation complies with international human rights standards;

(c) Continue to accord priority attention to judicial reform and the capacity-building and training of judges and lawyers to strengthen the independence and effectiveness of the judiciary;

(d) Initiate a process of consultation with all stakeholders on the review and amendment of the Constitution, to bring it into line with international standards.

83. With regard to democratic space, the Special Rapporteur recommends that the Government and Parliament of Myanmar:

(a) Amend or repeal section 18 of the Peaceful Assembly and Peaceful Procession Law and section 505 (b) of the Penal Code, drop all charges currently being brought against individuals under these provisions; and ensure that multiple charges are not brought against individuals for the same offence;

(b) Establish systems to prevent the surveillance and monitoring of civil society and human rights defenders; and investigate and redress systematically any threats, acts of intimidation or harassment against media and civil society actors;

(c) Provide adequate compensation and support, including psychological support and employment training, for released political prisoners;

(d) Initiate reform to the penal system to ensure compliance with international standards, particularly in relation to the minimum standards of accommodation and access to health facilities.

84. With regard to incitement to discrimination, the Special Rapporteur recommends that the Government and Parliament of Myanmar:

(a) Implement a comprehensive set of measures to combat and prevent acts of incitement to discrimination, hostility and violence against minorities, while upholding internationally recognized human rights standards;

(b) Ensure respect for the rights of minorities, including through education and awareness-raising measures addressing the root causes of discrimination, and promote interfaith and intercommunal dialogue, as well as confidence-building;

(c) Review and amend the Citizenship Law (1982) to bring it into line with international standards; and, in particular, remove any provisions that provide for the granting of citizenship on the basis of ethnicity or race;

(d) Resolve the legal status of habitual residents of Myanmar, including former holders of the temporary registration card, and ensure that they have equal access to citizenship through a non-discriminatory process.

85. With regard to Rakhine State, the Special Rapporteur recommends that the Government and Parliament of Myanmar:

(a) Review and revise all local orders, instructions and other policies and practices that are discriminatory in law and in practice;

(b) Address long-standing challenges to social and economic development through a human rights-based approach, while ensuring the participation of the communities affected, and fostering reconciliation and greater integration between communities.

86. In the field of gender equality and ensuring respect for women's rights, the Special Rapporteur recommends that the Government and Parliament of Myanmar:

(a) Enact a law on the prevention of violence against women that is compliant with international law, and take more effective measures to prevent and respond to all forms of sexual and gender-based violence, including in conflict;

(b) Develop a programme of comprehensive support for victims and survivors, including access to justice, and take the necessary steps to ensure that perpetrators are prosecuted and convicted;

(c) Create a system for the collection of disaggregated data on all forms of gender-based violence in order to measure the scope and scale of the problem;

(d) Ensure that members of the military who perpetrate serious crimes, including murder and rape, against civilians are prosecuted, and that such cases are transferred to civilian courts.

87. With regard to conflict-related human rights concerns, the Special Rapporteur recommends that the Government of Myanmar:

(a) Ensure prompt, independent and impartial investigations into allegations of violations committed in conflict areas, and the prosecution and punishment of all perpetrators;

(b) Ensure that complainants are not penalized or threatened with legal action for bringing complaints and seeking redress against violations committed by the military;

(c) End all child recruitment in the armed forces through strengthened recruitment procedures, age verification mechanisms and independent monitoring and oversight of all armed forces; release all children currently in the armed forces and in armed groups; and expedite the ratification of the Optional Protocol to the Convention on the Rights of the Child on children and armed conflict;

(d) Ensure the full participation of local and affected communities, civil society organizations and women in the peace process, including at the State level and in implementation and monitoring mechanisms;

(e) Ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction; prioritize the clearance of landmines and unexploded ordnance; and undertake comprehensive mine survey, marking and fencing activities.

88. In the field of economic, social and cultural rights, the Special Rapporteur recommends that the Government of Myanmar:

(a) Ensure that environmental impact assessment procedures are consistently implemented and enforced, and include genuine consultations with the

communities affected, and ensure that all relevant information is freely and easily accessible;

(b) Enact, following an extensive and inclusive consultation process, a new land law in compliance with international standards;

(c) Establish, following consultations with civil society organizations and individuals affected, a system for addressing land complaints and that includes mechanisms for redress for current and past cases;

(d) Review existing legislation and regulations governing the extractive industries to ensure they include transparency requirements and environmental, social and human rights protection.

89. The Special Rapporteur also calls upon all investors and businesses, domestic and international, to abide by the Guiding Principles on Business and Human Rights and other relevant standards in their investments and operations in Myanmar.

90. The Special Rapporteur calls upon the Government of Myanmar to ratify the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and all other core international human rights instruments.

91. The continued support and constructive engagement of the international community is vital at this important juncture. The Special Rapporteur therefore urges the international community to continue to monitor the situation of human rights closely and to engage the Government of Myanmar on the human rights concerns highlighted in the present report. She also calls upon the international community to assess progress on the basis of international human rights standards, and to hold Myanmar accountable to its international commitments and obligations.

Annex I

Legislation in need of reform in Myanmar*

Legislation	*Provision*	*Summary*	*Right at stake*	*References in reports by the Special Rapporteur on the situation of human rights in Myanmar since 2011*
Democratic space				
Penal Code	141 – 145	Imposes criminal penalties for membership of 'unlawful assemblies,' including up to six months' imprisonment for anyone joining or continuing an assembly, and up to two years for knowingly joining an assembly after it has been commanded to disperse.	Right to freedom of assembly	A/70/412 paras. 21 and 81(c); A/HRC/25/64 paras. 25 and 86(c); A/68/397 para. 67; A/HRC/22/58 paras. 26 and 90(b); A/HRC/19/67 para. 10; A/66/365 paras. 51 and 94(c)
	146, 147, 149	In an unlawful assembly, if any individual uses force or violence, all other members of the assembly can be prosecuted and imprisoned for violence, irrespective of their actual involvement.	Right to freedom of assembly	A/70/412 paras. 21 and 81(c)
	295	Imposes penalties of up to two years' imprisonment for speech intended to cause religious outrage which insults, or attempts to insult, religion or religious belief.	Right to freedom of expression	A/HRC/25/64 para. 86 (c); A/HRC/19/67 para. 10; A/66/365 paras. 51 and 94(c)
	298	Imposes penalties of up to one year's imprisonment for acts committed with deliberate intent to wound religious feelings.	Right to freedom of expression	
	499 - 502	Impose criminal penalties of up to two years' imprisonment for defamation.	Right to freedom of expression	
	505	Imposes penalties of up to two years imprisonment for publishing or circulating statements, rumours or reports with intent to cause members of the military to disregard their duty or which are likely to incite or induce the public to commit a broad range of offences.	Right to freedom of expression	A/70/412 paras. 21 and 81(c); A/HRC/25/64 paras. 25, 74 and 86(c); A/68/397 para. 67; A/HRC/22/58 para. 90(b); A/HRC/19/67 para. 10; A/66/365 paras. 51 and 94(c)
Code of Criminal Procedure	401	Allows the President to reverse a decision to grant amnesty if, 'in his opinion,' any condition imposed at the time of release is later breached.	Right not to be arbitrarily detained	A/HRC/25/64 paras. 62 and 86(c); A/68/397 paras.5 and 67; A/67/383 para.9 and 95(c); A/HRC/22/58 para.7; A/HRC/19/67 para.25

* Non-exhaustive list

Legislation	*Provision*	*Summary*	*Right at stake*	*References in reports by the Special Rapporteur on the situation of human rights in Myanmar since 2011*
Peaceful Assembly and Peaceful Processions Act (2011) (as amended in 2014)	4, 8	Requires individuals organising protests to seek prior permission from the authorities rather than to notify them. The permission granted by the authorities will be limited to a specific date, time, location and number of attendees, and will detail the specific chants to be used. If permission is denied, there is no right to appeal.	Right to freedom of assembly	A/70/412 paras. 20 and 81(c); A/HRC/28/72 paras. 13 and 64(a); A/69/398 paras. 27 and 79(d); A/HRC/25/64 paras. 24, 74 and 78(a); A/68/397 paras. 23, 62 and 84(a); A/HRC/22/58 paras. 26, 29, 32 and 90(a)
	12	Imposes a broad range of restrictions on assembly participants. In particular, they must not cause annoyance, behave in a way which could affect the country or Union, or use chants other than those prescribed in the permission.		
	18, 19	Impose penalties including prison sentences for unlawful assemblies or for breaching the above rules.		
Unlawful Associations Act (1908)	2, 16	Allow the President to declare any association illegal on the basis of a range of broad grounds related to security and maintenance of law and order.	Right to freedom of association	A/HRC/25/64 paras. 25, 74 and 78(b); A/HRC/22/58 paras. 26 and 90(b); A/67/383 paras. 28 and 95(c); A/HRC/19/67 para. 10; A/66/365 para. 51 and 94(c)
	17	Imposes penalties of up to three years' imprisonment for any member of an unlawful association or anyone who assists the association's operations. The manager of an unlawful association may be imprisoned for up to five years.		
Political Parties Registration Law (second amending legislation) (2014)	2	Amends section 4 of the Political Parties Registration Act to remove the right of associate and naturalized citizens and temporary certificate holders to form political parties.	Right to freedom of association	A/70/412 para. 12; A/HRC/28/72 para. 22; A/69/398 para. 14
	4	Amends section 10 (a) of the Political Parties Registration Act to remove the right of temporary certificate holders to become members of political parties.		
Electronic Transactions Law (2004)	34	Imposes penalties of up to five years' imprisonment for using electronic technology in relation to information which causes detriment to the interest of any organisation or person.	Right to freedom of expression	A/68/397 paras.17, 67 and 83(c); A/HRC/25/64 paras. 19 and 76(c); A/HRC/22/58 para. 89(d); A/67/383 paras. 26 and 95(c)
Telecommunications Law (2013)	66 (d)	Imposes penalties of up to three years' imprisonment for a range of broadly worded acts carried out through the telecommunications network, including defamation.	Right to freedom of expression	A.HRC/31/71 para. 19
	76	Allows government bodies unlimited power to enter and inspect any telecommunications service, or require them to submit documents, if it is in the public interest or in the interests of national security.	Right to privacy	A.HRC/31/71 para. 25
	77	Allows the Ministry of Information and Communications Technology broad powers to suspend or take control of any telecommunications service in an emergency situation.		

Legislation	*Provision*	*Summary*	*Right at stake*	*References in reports by the Special Rapporteur on the situation of human rights in Myanmar since 2011*
Ward or Village Tract Administration Law (2012)	13, 17	Require individuals to register with the Ward or Village Tract Administrator any overnight guest who is not registered as part of the family unit. Allow the Administrator to conduct household inspections to determine if unregistered guests are present.	Right to privacy	A/70/412 para. 29
News Media Law (2014)	9	Imposes a Code of Conduct on all media workers, including an obligation to avoid writing news that deliberately affects the reputation of a specific person or organization and obey unspecified regulations published by the Media Council.	Right to freedom of expression	A/70/412 para. 72; A/HRC/28/72 paras. 7 and 64(b); A/69/398 para 23
	25	Imposes a fine of up to 1,000,000 kyats for breach of certain sections of the Code of Conduct, including the prohibition on deliberately causing reputational damage.		
Printing and Publishing Enterprise Law (2014)	4 – 7, 15, 16, 19	Require publishing business to apply to the Ministry of Information for a licence. Imposes fines of up to 5,000,000 Kyats on those failing to do so. Allow the Ministry to revoke or suspend licences if the organisation is found to have applied dishonestly. This decision may only be appealed to the Minister of Information.	Right to freedom of expression	A/70/412 para. 72; A/HRC/28/72 paras. 6 and 64(c);
Television and Video Law (1985)	22	Creates a Video Censor Board which includes the Managing Director of the Myanmar Motion Picture Enterprise (administered by the Ministry of Information) and representatives from 'relevant' government departments.	Right to freedom of expression	A/HRC/25/64 para 76(c); A/68/397 paras. 7 and 83(c), A/HRC/22/58 paras. 89(d) A/HRC/19/67 paras. 10 and 42; A/66/365 paras. 51 and 94(c)
	24	Allows the Video Censor Board unlimited power to prohibit the public exhibition of a video tape, to seize and destroy any such video tape, and to require a video to be amended or partially erased before public exhibition.		
	26	Allows the Video Censor Board to revoke a video censor certificate if there is a 'valid reason' for doing do.		
	38	Provides the Video Censor Board unlimited power to limit the public exhibition of foreign imported video tapes and amend or erase 'unsuitable' elements of video tapes before export.		
	32	Imposes penalties of up to three years' imprisonment for anyone committing a range of offences including distributing or exhibiting a video without a video censor certificate and operating a video business without a licence.		
Motion Picture Law (1996)	10	Provides for the creation of a Motion Picture Censor Board which includes the Managing Director of the Myanmar Motion Picture Enterprise (administered by the Ministry of Information) and representatives from 'relevant' government departments.	Right to freedom of expression	A/68/397 paras 67 and 83(c); A/HRC/25/64 para 76(c); A/HRC/22/58 para 89(d); A/67/383 paras 26 and 95(c); A/HRC/19/67 paras. 10 and 42; A/66/365 paras. 51 and 94(c).
	12	Allows the Motion Picture Censor Board to refuse permission to film a feature or only allowing filming to begin once a feature has been modified.		

Legislation	*Provision*	*Summary*	*Right at stake*	*References in reports by the Special Rapporteur on the situation of human rights in Myanmar since 2011*
	13	Allows the Motion Picture Censor Board unlimited power to prohibit the public exhibition of a motion picture, to retain or destroy any motion picture films at will; and to require a motion picture to be amended, before public exhibition.		
	17	Allows the Motion Picture Censor Board to revoke a censor certificate if there is a 'valid reason' for doing so.		
	33	Imposes penalties of up to one year's imprisonment for anyone carrying on a motion picture business without a licence or screening a motion picture without a Certificate.		
Computer Science Development Law (1996)	34	Imposes penalties of up to 15 years' imprisonment for anyone who uses information technology to distribute information or to carry out an act which undermines a range of broadly worded categories including 'national unity' and 'national culture.'	Right to freedom of expression	A/68/397 paras. 67 and 83(c); A/HRC/25/64 para 76(c); A/HRC/22/58 para 89(d); A/67/383 paras. 26 and 95(c); A/HRC/19/67 paras. 10 and 42; A/66/365 paras. 51 and 94(c)
Emergency Provisions Act (1950)	5	Imposes penalties of up to seven years' imprisonment for 'anything' that is done with various broad categories of intent, including anything done to affect the 'loyalty' of civil servants or to 'spread false news.'	Right to freedom of expression	A/HRC/25/64 paras 19, 74 and 76(c); A/68/397 paras. 67 and 83 (c); A/HRC/22/58 para. 89(d); A/67/383 para. 95(c); A/66/365 para. 94(c)
State Protection Act (1975) (as amended in 1991)	10, 11, 14, 16	The Central board may order the detention of an individual for up to 180 days which may be extended to five years upon approval by the Cabinet. Restriction on the movement of an individual can also be ordered by the Central Board for up to one year. Detention must be reviewed every 60 days by the Cabinet or the Central Board. The article is silent on procedural guarantees for the detained individual.	Right not to be arbitrarily detained Right to an effective remedy	A/68/397 para. 67 and 83(c), A/HRC/25/64 para. 76(c); A/HRC/22/58 para. 89 (d); A/67/383 para. 95(c); A/HRC/19/67 para. 10; A/66/365 paras. 51 and 94(c)
	20	Appeals against decisions made by the Central Board can only be made to the Cabinet.		
Independence of judges and lawyers				
Contempt of Courts Law (2013)	2(d), 10	Imposes penalties of up to six months' imprisonment for a range of acts relating to judicial proceedings, including 'impairing the public trust' in the judiciary or commenting on a judicial decision before it is passed, the latter subject to a defence of truth.	Right to freedom of expression and opinion	A/HRC/25/64 paras. 56 and 86(b)
Penal Code	228	Imposes penalties of up to six months' imprisonment for anyone who intentionally 'offers any insult' or 'causes any interruption' to any public servant siting in a judicial capacity.	Right to freedom of expression and opinion	A/HRC/31/71 para. 17

Legislation	*Provision*	*Summary*	*Right at stake*	*References in reports by the Special Rapporteur on the situation of human rights in Myanmar since 2011*
Minorities and citizenship				
Religious Conversion Law (2015)	2 (c), 5, 7, 10	Creates a state regulated system for changing religion, which requires application, justification, and registration for conversion, followed by an interview, mandated study, and approval by the Registration Board.	Right to freedom of religion and belief	A/70/412 paras. 76 and 81 (d); A/HRC/28/72 paras. 28 and 67(b)
Population Control Health-care Law (2015)	2	Refers to 'population control', which could be seen as regressive and coercive approach to population and development.	Sexual and reproductive health and rights	A/70/412 para 76 and 81(d); A/HRC/28/72 para 28 and 67(b)
	14 (f)	Provides a list of functions and duties of township groups including 'organizing' married couples to practice 36-month birth spacing between pregnancies.		
Buddhist Women's Special Marriage Law (2015)	9 (c)	Requires Buddhist women above 18 and under age 20 to seek parental consent to enter into marriage with non-Buddhist men. This requirement is not imposed on Buddhist men.	Right to marry Right to equality and non-discrimination	A/70/412 para. 76 and 81(d), A/HRC/28/72 para 29 and 67(b)
	26, 27	Provides that a cohabiting couple, where the female partner is Buddhist and the male partner is not, shall be assumed to have married in certain circumstances. The Buddhist women's parents, guardians or relatives may provide information about this cohabitation which can result in the couple being forced to marry or being sued in court. The provision is only applicable to Buddhist women cohabiting with non-Buddhist men.		
	32	Provides protections against some forms of domestic violence for Buddhist women married to men of other faiths but does not extend these protections to all women. In cases of separation, dissolution of marriage or divorce, non-Buddhist fathers are denied custody of children in all circumstances.		
	24, 39, 40	Impose broad and vague obligations on non-Buddhist men married to Buddhist women such as not to "insult, in words or in writing or through visible representation or gesture, with bad intention to cause bitter feeling to the Buddhist". Penalties for breach of these obligations include possible prison sentences.		
Monogamy Law (2015)	10, 16, 17	Impose criminal penalties for extramarital relationships.	Right to privacy Right to non-discrimination	A/70/412 para 76 and 81(d), A/HRC/28/72 para 29 and 67(b)
Citizenship Law (1982)	3 (1)	Gives full citizenship only to those ethnic groups which settled in Myanmar prior to 1823 AD.	Right to equality and non-discrimination	A/70/412 para 41 and 81(b), A/HRC/28/72 para 67(c), A/69/398 para 12 and 53, A/HRC/25/64 para 49 and 83(f), A/68/397 para 57 and 91(n),
	35	Allows the revocation of associate citizenship on vague grounds of 'disaffection or disloyalty' to the state or offences 'involving moral		

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		turpitude.'		A/HRC/22/58 para 56 and 94(h), A/67/383 para 65 and 94(f)
	58	Allows the revocation of naturalized citizenship on vague grounds of 'disaffection or disloyalty' to the state or offences 'involving moral turpitude.'		
Economic, social and cultural rights				
Farmland Law (2012)	12, 15, 17, 19	Forms management bodies made up of representatives of Ministries who are in charge of resolving land disputes and approving land use change. Prohibits the farmer granted the right to use the land from various activities without permission from the management bodies including growing other crops or leaving the land to fallow. Breach of the requirement can lead to a fine, eviction or the removal of buildings constructed without permission.	Right to adequate standard of living, including the right to adequate housing, food, water and sanitation	A/70/412 para. 62; A/69/398 para. 57; A/HRC/25/64 para. 27; A/68/397 para. 29; A/67/383 paras. 38
	22, 29, 30	The Farmland Management Body and the Cabinet can authorise the use of land for other purposes if it is deemed to be in the national interest, subject to compensation. There is no right to appeal to an independent body.		
Vacant, Fallow and Virgin Lands Management Law (2012)	2-4, 25	Defines vacant, fallow and virgin land and creates a committee made up of ministry personnel and other 'suitable persons', charged with authorising the right to use vacant fallow and virgin land. It has the vague duty to work with relevant government departments to protect farmers utilizing land without formal recognition.	Right to adequate standard of living, including the right to adequate housing, food, water and sanitation	A/70/412 para. 62; A/68/397 para. 29; A/HRC/25/64 para. 27
Land Acquisitions Act (1894)	4, 6 (1), 7, 16	Allows the President to order the confiscation of land if in his opinion it 'is needed or is likely to be needed for any public purposes' subject to a procedure and compensation.		A/70/412 para. 62
Other				
Penal Code	377	Imposes penalties of up to ten years' imprisonment for sexual intercourse 'against the order of nature', which includes consensual same sex conduct.	Right to privacy, equality and non-discrimination	A/68/397 paras. 43 and 89(a)
	497, 498	Imposes penalties of up to five years' imprisonment for adultery when committed by a man.	Right to privacy	
Former Presidents' Security Law (2016)	10	Gives former Presidents immunity from judicial prosecution for measures taken during their term of service 'in accordance with the law'.	Right to remedy and accountability	A/HRC/31/71 para. 12

Legislation	*Provision*	*Summary*	*Right at stake*	*References in reports by the Special Rapporteur on the situation of human rights in Myanmar since 2011*
Myanmar National Human Rights Commission Law (2014)	5, 8, 9	Grants authority to a Selection Board containing a significant number of Government officials to adopt its own undefined procedures for nominating 30 prospective Commission members. The President, in conjunction with the speakers of both houses of Parliament, selects up to 15 Commission members from this shortlist and also appoints the Chair and Vice Chair.	Not fully compliant with Paris Principles on composition, independence and pluralism	A/HRC/31/71 para. 74
	46	The law is silent on how the Commission's budget is developed.		